

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

<u>WILLIAM MOTOSICKY</u>)	Case Number
)	
Plaintiff)	
)	
vs.)	CIVIL COMPLAINT
)	
ALLIED INTERSTATE, INC.)	
)	JURY TRIAL DEMANDED
Defendant)	
)	

COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiff, William Motosicky, by and through his undersigned counsel, Brent F. Vullings, Esquire of Warren & Vullings, LLP, complaining of Defendant, and respectfully avers as follows:

I. INTRODUCTORY STATEMENT

1. Plaintiff, William Motosicky, is an adult natural person and brings this action for actual and statutory damages and other relief against Defendant for violations to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (“FDCPA”), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices, the Pennsylvania Fair Credit Extension Uniformity Act, 73 P.S. § 2270.4 (“PFCEUA”) and the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1-201-9.3 (“UTCPL”) which prohibits debt collectors and original creditors from engaging in abusive, deceptive and unfair practices.

II. JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. §1337.

3. Venue in this District is proper in that the Plaintiff resides in this District.

III. PARTIES

4. Plaintiff, William Motosicky, is an adult natural person residing at 364 Barr Road, Natrona Heights, PA 15065. At all times material and relevant hereto, Plaintiff is a “consumer” as defined by the FDCPA, 15 U.S.C. § 1692a (2).

5. Defendant, Allied Interstate, Inc. (“Defendant”), at all times relevant hereto, is and was a corporation engaged in the business of collecting debt within the Commonwealth of Pennsylvania with a principal place of business located at 12755 Hgwy 55, Suite 300, Plymouth, MN 55441.

6. Defendant is engaged in the collection of debts from consumers using the telephone and mail. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6).

IV. FACTUAL ALLEGATIONS

7. During the end of October, 2010, Plaintiff started to receive calls to his personal cell phone from Defendant collecting on a debt allegedly owed on two (2) Capital One accounts

8. In early November, 2010, Plaintiff’s father started to receive calls for his son from Defendant on the above mentioned accounts.

9. Defendant informed Plaintiff's father the balance of his son's overdue accounts as well as the amount of time the Plaintiff's debt was behind in payment.

10. At that time, Plaintiff's father informed the Defendant that his son did not reside with him and that they needed to stop calling his home.

11. Plaintiff's father was asked to have his son call immediately on these accounts.

12. Despite already speaking to the Plaintiff the Defendant continued to call the Plaintiff's father.

13. On or about November 11, 2010, Plaintiff's father received yet another call from the Defendant looking for the Plaintiff.

14. During this call, Plaintiff's father was again fully informed of his son's outstanding debt and again asked to have his son call immediately on this matter.

15. Plaintiff's father again told the Defendant not to call his home.

16. On or about November 18, 2010, Defendant called the Plaintiff's father's home again.

17. On that day, Plaintiff was at his father's home visiting and was able to take the call from the Defendant.

18. Plaintiff was told by Defendant that if he did not arrange for payment that he would be sued.

19. Defendant went on to state that the Plaintiff would be charged with a civil offense for not paying his debts.

20. On or about November 19, 2010, Plaintiff received a call on his personal cell phone from Defendant collecting on this debt.

21. Plaintiff informed the Defendant that he had retained the services of legal counsel and that the Defendant would need to speak with them directly.

22. Defendant refused to work with Plaintiff's attorney.

23. Defendant told the Plaintiff that he needed to handle this matter on his own or he would be sued and civilly charged.

24. As of the filing of this complaint, Plaintiff has never received anything in writing from the Defendant on this matter.

25. The Defendant acted in a false, deceptive, misleading and unfair manner when they engaged in conduct the natural consequence of which is to harass, oppress or abuse such person in connection with the collection of a debt.

26. The Defendant knew or should have known that their actions violated the FDCPA. Additionally, Defendant could have taken the steps necessary to bring their and their agent's actions within compliance of the FDCPA, but neglected to do so and failed to adequately review those actions to insure compliance with the law.

27. At all times pertinent hereto, Defendant was acting by and through its agents, servants and/or employees, who were acting within the scope and course of their employment, and under the direct supervision and control of Defendant herein.

28. At all times pertinent hereto, the conduct of Defendant as well as its agents, servants and/or employees, was malicious, intentional, willful, reckless, negligent and in wanton disregard for federal and state law and the rights of the Plaintiff herein.

29. As a result of Defendant's conduct, Plaintiff has sustained actual damages, including, but not limited to, injury to Plaintiff's reputation, invasion of privacy, damage to Plaintiff's credit, out-of-pocket expenses, physical, emotional and mental pain and anguish and pecuniary loss and he will continue to suffer same for an indefinite time in the future, all to his great detriment and loss.

COUNT I - FDCPA

30. The above paragraphs are hereby incorporated herein by reference.

31. At all times relevant hereto, Defendant was attempting to collect an alleged debt which was incurred by Plaintiff for personal, family or household purposes and is a "debt" defined by 15 U.S.C. § 1692a(5).

32. The foregoing acts and omissions constitute violations of the FDCPA, including, but not limited to, violations of:

- | | |
|-----------------|--|
| §§ 1692b(2): | Contact of Third Party: Stated that the consumer owes any debt |
| §§ 1692b(3): | Contact of Third Party: Contacted a person more than once unless requested to do so |
| §§ 1692c(a)(1): | At any unusual time, unusual place or unusual time and place |
| §§ 1692c(a)(2) | After it knows the consumer to be represented by an attorney unless attorney consents or is unresponsive |
| §§ 1692c(b): | With anyone except consumer, consumer's attorney or credit bureau concerning the debt |

§§ 1692d	Any conduct the natural consequence of which is to harass, oppress or abuse any person
§§ 1692d(5)	Caused the phone to ring or engaged any person in telephone conversations repeatedly
§§ 1692(e)	Any other false, deceptive or misleading representation or means in connection with debt collection
§§ 1692e(2)	Character, amount or legal status of the alleged debt
§§ 1692e(5)	Threaten to take any action that cannot be legally taken or that is not intended to be taken
§§ 1692e(10)	Any false representation or deceptive means to collect a debt
§§ 1692f	Any unfair or unconscionable means to collect or attempt to collect the alleged debt
§§ 1692g:	Failure to send the consumer a 30-day validation notice within five days of the initial communication

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant, Allied Interstate, Inc. for the following:

- a. Actual damages;
- b. Statutory damages pursuant to 15 U.S.C. § 1692k;
- c. Reasonable attorney's fees and litigation expenses, plus costs of suit;
- d. Such addition and further relief as may be appropriate or that the interests of justice require.

COUNT II
VIOLATIONS OF PENNSYLVANIA FAIR CREDIT EXTENSION
UNIFORMITY ACT
(FCEUA, 73 Pa. C.S. § 2270.1 et seq.)

33. Plaintiff repeats, re-alleges and incorporates by reference the foregoing paragraphs.

34. The collection of a debt in Pennsylvania is proscribed by the Fair Credit Extension Uniformity Act at 73 Pa. C.S. § 2270.1 et seq., (“FCEUA”) and the Pennsylvania Unfair Trade Practices and Consumer Protection Law 73 Pa. C.S. 201-1 et seq. (“UTPCPL”). Defendant is a debt collector pursuant to 73 Pa. C.S. § 2270.3.

35. The alleged debt Defendant was attempting to collect is a debt as defined by 73 Pa. C.S. § 2270.3.

36. The FCEUA proscribes, inter alia, engaging in any false, misleading or deceptive representations when attempting to collect a consumer debt.

37. The actions of Defendant, as aforesaid, constitute false, misleading or deceptive representations.

38. Violations of the FDCPA is a per se violation of the FCEUA and the UTPCPL.

39. As a direct and proximate result of the said actions, Plaintiffs have suffered financial harm.

40. By virtue of the violations of the law as aforesaid, and pursuant to the FCEUA and UTPCPL, Plaintiffs are entitled to an award of actual damages, treble damages, attorney’s fee and costs of suit.

WHEREFORE, Plaintiff prays this Honorable Court enter judgment in their favor and against Defendant, and Order the following relief:

- a. Actual damages;
 - b. Treble damages;
 - c. An award of reasonable attorneys fees and expenses and costs of court;
- and
- d. Such additional relief as is deemed just and proper, or that the interests of justice require.

COUNT III

**VIOLATIONS OF PENNSYLVANIA CONSUMER PROTECTION LAW
("UTCPL"), 73 Pa. C.S. § 201-1 et seq.**

- 41. The foregoing paragraphs are incorporated herein by reference.
- 42. Plaintiff and Defendant are "Persons" to 73 Pa. C.S § 201-2.
- 43. The UTCPL proscribes, inter alia, engaging in any "unfair or deceptive acts or practices", either at, and prior to or subsequent to a consumer transaction.
- 44. The action of Defendant, as aforesaid, constitutes unfair acts or practices under the UTCPL, by way of the following, inter alia:
 - a. Defendant misrepresented to Plaintiff the character, extent or amount of the debt or its status in a legal proceeding, 73 Pa. C.S. § 201-3.1;
 - b. Defendant engaged in deceptive or fraudulent conduct which created a likelihood of confusion or of misunderstanding, 73 Pa. C.S. § 201-2(xxi);

c. Defendant failed to comply with the FDCPA and FCEUA which are per se violations of the UTPCPL.

45. As a direct and proximate result of the said actions, Plaintiff has suffered financial damages and other harm.

46. By virtue of the violations of law aforesaid and pursuant to the UTPCPL, Plaintiff is entitled to an award of actual damages, treble damages, attorney's fees and costs of suit.

WHEREFORE Plaintiff prays this Honorable Court enter judgment in their favor and against Defendant, and Order the following relief:

- a. An Order declaring that Defendant violated the UTPCPL;
- b. Actual damages;
- c. Treble damages;
- d. An award of reasonable attorney's fees and expenses and cost of suit; and
- e. Such additional relief as is deemed just and proper, or that the interest of justice may require.

V. JURY DEMAND

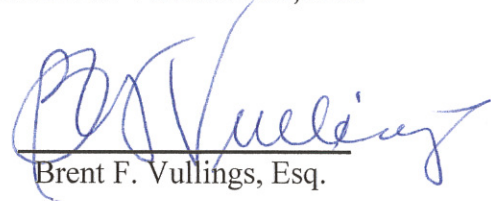
Plaintiff hereby demands a jury trial as to all issues herein.

Respectfully submitted,

WARREN & VULLINGS, LLP

Date: December 8, 2010

BY:



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